

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.425/08

Thursday this the 25th day of June 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

R.Jyothidas,
S/o.Ramankutty,
Ticket Examiner,
O/o. Chief Travelling Ticket Examiner,
Southern Railway, Palghat.
Residing at Lakshmi Nivas,
Meleppuram, Olavakkode, Palghat – 678 002. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.
5. N.Janardhanan,
Luggage Porter,
Tirur Railway Station,
Southern Railway, Tirur. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil [R1-4]
& Mr.P.A.Kumaran [R5])

This application having been heard on 25th June 2009 the Tribunal
on the same day delivered the following :-





.2.

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-7 order dated 18.7.2008 of the 4th respondent, namely, the Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat by which he has been reverted to the post of Sweeper cum Porter in the scale of Rs.2610-3540 from the post of Ticket Examiner in the scale of Rs.3050-4590. The aforesaid order alleged to have been passed purportedly in pursuance of the Annexure A-4 order of this Tribunal in O.A.500/07 – N.Janardhanan Vs. Union of India & Ors. The applicant in the said O.A was aggrieved by the non inclusion of his name in the select panel dated 27.1.2007 (Annexure A-2 herein) issued by the 2nd respondent for promotion to Group 'C' post of Ticket Collectors in Palghat Division of Southern Railway in the scale of Rs.3050-4590 against vacancies of 33 1/3% of promotion quota. He was also aggrieved by the promotion of the applicant herein, who was arrayed as the 3rd respondent, as Ticket Collector who is alleged to be his junior. The aforesaid O.A was disposed of with a direction to the respondents to send the applicant therein for re-medical examination for BEE TWO classification and if he is found fit, to take appropriate action in the matter in accordance with the rules. Thereafter, he was appointed as Ticket Examiner in the scale of Rs.3050-4590 and consequently, the applicant in this O.A., being the junior most among the unreserved category empanelled in the Annexure A-2 memorandum, was reverted by the impugned Annexure A-7 order.



.3.

2. During the course of the arguments, the learned counsel for the applicant has produced a copy of the order of this Tribunal in O.A.395/08 decided on 8.6.2009 filed by another person with identical claims as in the case of O.A.500/07 (supra). The applicant in this O.A was the 4th respondent in the said O.A. While allowing the case of the applicant therein, this Tribunal observed that no relief has been claimed against the applicant in this O.A., who was the private respondent therein and if he is otherwise eligible he has to be posted as Ticket Collector and in the event of the applicant therein being accommodated, if there is no vacancy to accommodate the applicant herein, the official respondents have to create a supernumerary post, if need be, and further continue the applicant herein in the promotional post, against any other vacancy. The operative part of the said order is reproduced as under :-

"6. Arguments were heard and documents perused. True, as early as in 1997, the applicant's medical standard was less than Bee Two. It is after about nine years, that the applicant subjected himself to further medical examination when the Railway Medical authority had opined that the applicant is fit for holding the post for which Bee Two is the medical standard and where use of glass is permitted. This certificate is stated to have been cancelled but there is absolutely no indication as to what prompted the department to unilaterally cancel the certificate without subjecting the applicant for re-examination. This is thoroughly inappropriate and illegal. The applicant's counsel is not wrong when he alleges that it is a calculated move to distance the applicant from being promoted, that the respondents have indulged in such arbitrary action. It is not the case of respondents that once a medical certificate certifying a particular standard of medical fitness is issued, the same cannot be changed in future. In all expectations, the applicant would have improved his health to come up to Bee Two standard. Cancelling the certificate given without subjecting the applicant for another test, is an arbitrary action. As such, the same cannot be allowed.

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.4.

7. In view of the above, this OA is allowed. It is declared that on the basis of medical certificate vide Annexure A-3 and the performance of the applicant in the test vide Annexure A-10, the applicant is entitled to be considered for promotion to the post of Ticket Collector. The Department at the same time are well within their rights to subject the applicant to such medical examination. If the applicant's medical standard meets the requirement for the post of Ticket Collector, the appointment of the applicant shall be from the date his junior stands promoted. He is not however entitled to any backwages for his promotion on retrospective basis but his pay shall be fixed notionally and he is eligible for future pay taking into account the notional fixation of pay. In so far as the respondent no.4 is concerned, counsel for respondent 4 submitted that no relief has been claimed against the said respondent. The counsel for the private respondent is right when he argues that no relief has been sought against the said respondents. The said respondent is otherwise eligible and has to be posted as Ticket Collector. In the event of the applicant being accommodated, if there is no vacancy to accommodate private respondent, it is for the official respondents to create a supernumerary post if need be and further continue the respondent no.4 in the promotional post, against any other vacancy.

8. Promotion of the applicant in the event of his fulfilling the medical standard and fixation of pay shall be completed within a period of four months from the date of communication of this order. No costs."

3. In view of the aforesaid order of the Co-ordinate Bench of this Tribunal, we are of the considered view that this O.A has become infructuous. It is, therefore, dismissed as infructuous. There shall be no order as to costs.

(Dated this the 25th day of June 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER